

# WETLANDS COUNCIL

## MINUTES

January 11, 2005

---

The Wetlands Council met on Tuesday, January 11, 2005 at the Department of Environmental Services, 29 Hazen Dr., Concord, NH

**Attendees:** Brian K. Fowler, Chairman; Thomas G. Chrisenton, John S. Cobb, Ben Frost, William Ingham, Jr., Camilla Lockwood, Lawrence E. Morse, Glenn Normandeau, Russ St. Pierre, and Thomas Sloan

**Absentees:** Sharon Champagne, William M. Dannehy, R. Sean O'Kane/designee

The meeting was called to order by Chairman Brian Fowler at 9:05 a.m.

1. **Approval of Minutes of October 26, 2004 Meeting**  
*A motion was made by Councilor Cobb and seconded by Councilor Ingham to accept the minutes of October 26, 2004 as presented. It was unanimously voted.*
2. **Shoreland Protection Act**  
Attorney Jennifer Patterson, Chief of the Environmental Protection Bureau, Attorney General's Office, discussed a recent legal opinion issued by the Attorney General's Office on the Shoreland Protection Act ("SPA"). The opinion responds specifically to questions raised by DES. In this case, clarification was requested on the level of review required by DES and the precedence of municipal ordinances.

### **Level of Review by DES**

The SPA is an overlay to the existing permitting system within DES and to municipal zoning, and the law requires that any permit issued by DES or by a municipality be consistent with the SPA. Currently, there is no separate SPA permit required. When the SPA was originally passed a separate permit was required; but before the act took effect, that provision was changed.

Whenever an application for a permit is received, DES now must determine whether the project being proposed falls within 250' of protected shoreland. If it does, DES will have to assess whether the work proposed meets the shoreland protection standards. In the event of an appeal of a wetlands permitting decision, the Wetlands Council jurisdiction is expanded to include information and findings related to the SPA.

9:25 Larry Morse arrived

Precedence of Municipal Ordinances

The only circumstance under which municipal ordinances take precedence over the SPA is when the ordinances have been certified in writing by the Office of Energy and Planning ("OEP"). With regard to primary building setbacks, the standard setback under the SPA for primary structures is 50' from the reference line. Prior to the 2002 amendment to the SPA, municipalities could establish their own primary building setbacks. If a municipality adopted a shoreland setback less than 50' prior to January 1, 2002, that setback will remain in place in that municipality, but all other components of the SPA will apply.

9:55 Council meeting recessed

9:55 Tom Sloan Arrived

**10:00 Hearing: Docket No. 04-11 WtC - Jeannette and Lauren Boss**

11:35 Council meeting reconvened

**3. Status of Appeals**

Michael Sclafani, Appeals Clerk, distributed an Appeals Status Report and reviewed the report with council members.

- Docket No. 02-16 WtC - Donald S. Thompson: WB #2002-01019  
On December 13, 2004 DES issued a Notice of Decision that revocation of the wetlands permit was not warranted. The stay remains in effect.
- Docket No. 03-11 WtC - Town of Barrington  
A stay remains in effect.
- Docket No. 04-07 WtC - Christopher Krochina: WB #2003-00183  
On October 29, 2004, applicant filed an Objection to appellant's Motion to Supplement the Record; appellant filed an Objection to DES's Motion to Strike; Attorney K. Allen Brooks filed an Appearance on behalf of DES; and DES filed an Objection to appellant's Motion to Supplement the Record. An appeal hearing was held on November 9, 2004 and the council voted to deny the appeal. On November 29, 2004 a written Decision & Order was issued. On December 20, 2004 appellant filed a Motion for Reconsideration and on December 27, 2004 the applicant filed an Objection to Appellant's Motion for Reconsideration.

***Councilor Lockwood made a motion to deny appellant's Motion for Reconsideration. Councilor Cobb seconded the motion and it was unanimously voted.***

***Councilor Chrisenton made a motion to accept the draft Decision & Order to deny the Motion for Reconsideration as presented. Councilor Sloan seconded the motion and it was unanimously voted.***

- Docket No. 04-08/09 WtC - GCC/CLF: WB #2002-01268  
**Councilors Morse and Ingham recused themselves from discussion and vote on this appeal.**

An appeal hearing was held on October 26, 2004. The council voted to deny the appeal and a written Decision & Order was issued on November 12, 2004. On November 30, 2004, appellant GCC filed a Motion for Reconsideration and DES filed a Motion for Clarification. Appellant CLF filed a Motion for Reconsideration on December 1, 2004.

***Councilor Frost made a motion to deny the Appellants' Motions for Reconsideration. Councilor Chrisenton seconded the motion and it was unanimously voted.***

***Councilor Chrisenton made a motion to accept the draft Decision & Order on pending motions as presented. Councilor Normandeau second the motion and it was unanimously voted.***

- Docket No. 04-11 WtC - Jeannette and Lauren Boss: WB #2001-00982  
On December 17, 2004, Attorney K. Allen Brooks filed an appearance on behalf of DES along with a Pre-hearing Memo. On December 23, 2004 DES filed a Motion to Dismiss. Appellants filed a Reply to DES's Pre-hearing Memo on December 27, 2004 and on January 3, 2005 appellants filed an objection to DES's Motion to Dismiss. An appeal hearing is scheduled for today at 10:00 a.m.

- Docket No. 04-13 WtC - Mark E. Young: WB #2003-02680  
An appeal hearing was held on November 9, 2004. The council voted to deny the appeal and a written Decision & Order was issued on November 29, 2004. Appellant filed a Motion for Reconsideration on December 17, 2004.

***Councilor Lockwood made a motion to deny appellant's Motion for Reconsideration. Councilor Cobb seconded the motion and it was unanimously voted.***

***Councilor Chrisenton made a motion to accept the draft Decision & Order to deny appellant's Motion for Reconsideration as presented. Councilor Sloan seconded the motion and it was unanimously voted.***

- Docket No. 04-20 WtC - 27 Members of Focus Tamworth: WB #2004-00377  
**Councilor Morse recused himself from discussion on this appeal.**

A pre-hearing conference was scheduled for December 14, 2004. On November 5, 2004 Attorney Anthony I. Blenkinsop filed an appearance on behalf of DES. DES filed Assented-To Motions to (1) Extend Deadline for Preparation and Submission of the Certified Record (2) Waive Rule re: Copies of Oversized Plans in Certified Record, and (3) Waive Rule re: Filing the Certified Record in reverse chronological order. The council granted the three assented-to motions. On November 23, 2004 Attorney Susan Dupree filed an

appearance on behalf of the applicant along with a Motion to Intervene. Applicant's Motion to Intervene was granted on November 24, 2004. Also on November 24, 2004, DES filed a Certified Record with the council. On December 2, 2004, the pre-hearing conference was rescheduled for January 25, 2005 at 9:00 a.m.

- Docket No. 04-21 WtC - Lakeshore Realty Trust: WB #2001-01294  
On November 19, 2004 DES filed a Certified Record with the council. On December 6, 2004, the pre-hearing conference was rescheduled for December 28, 2004. The Town of Alton filed a Request for Intervener Status on December 9, 2004. On December 28, 2004 a pre-hearing conference was held at which time Attorney K. Allen Brooks filed an appearance on behalf of DES, the Town of Alton's Motion to Intervene was granted, and the parties agreed to file a Motion to Stay pending the outcome of a ZBA appeal to the Town of Alton. A written Decision & Order was issued on December 29, 2004 granting the Town of Alton's Motion to Intervene. To date, the parties have not filed a motion to stay.
- Docket No. 04-23 WtC - John and Patricia Booth: WB #2004-00668  
On December 3, 2004 a Notice of Appeal was filed. The appeal concerns the denial of a permit to repair an existing structure at the Edgewater Condominium Association in Gilford, NH.

***Councilor Chrisenton made a motion to accept the appeal. Councilor Lockwood seconded the motion and it was unanimously voted.***

5. **Old Business**

There is no old business to come before the council.

6. **Other Business**

There is no other business to come before the council.

4. **Wetlands Bureau Update**

In -Lieu Fee Mitigation Program

Collis Adams, Wetlands Bureau Administrator, distributed draft in-lieu fee rules and provided an overview of the in-lieu fee mitigation program. The program provides an additional option for wetlands mitigation when mitigation is not possible or practical onsite. The applicant will have the obligation to go through the process for avoidance, minimization and onsite mitigation before going to the in-lieu fee option. Initially, projects that impact from 10,000 square feet to one acre will be eligible.

Fees will be determined by (1) the cost to construct wetlands, (2) a factor to take into account the disparity in land values from county to county, and (3) administrative fees, which would be paid to a non-governmental organization to administer the fund. Money will be disbursed for restoration projects or land preservation to directly benefit aquatic resources, surface water or wetlands.

A technical advisory committee will be established to evaluate and rank proposed projects and make recommendations to an advisory board on which projects should receive funding. An advisory board will be established to provide oversight of the program and issue final decisions on dispersal of funds. It has been suggested that the Wetlands Council could serve as the advisory board.

Mr. Adams invited the councilors to submit comments on the program.

Waiver of Rules

Mr. Adams explained that there is no provision in the Wetlands rules to waive its rules nor is there a provision for the commissioner to develop a waiver process. A statutory change is proposed to allow the commissioner to establish a waiver provision.

**7. Next Meeting**

The next meeting will be scheduled as determined by Chairman Fowler.

**8. Adjournment**

The meeting adjourned at approximately 12:40 p.m.